

REMARKS

Claims 1, 2, 5, 7-10, 12 and 14-47 are currently pending, although claims 7-9, 17-19 and 44-46 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of withdrawn claims as appropriate.

The Office Action also rejected the pending claims as obvious under 35 U.S.C. § 103 over U.S. patents 6,294,112 ("Clarke"), 6,123,952 ("Lagrange") and 6,369,147 ("Polonka"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to compositions containing, in a physiologically acceptable medium, both a naphthopyran derivative compound of formula (Ia) or (IIa) photochrome which has a difference in hue ΔE between its excited state and its unexcited state at least equal to 5 and a goniochromatic coloring agent. As demonstrated in the examples of the present application, such compositions can provide a novel dynamic effect in terms of color and radiance. For example, the invention compositions can reversibly change color within a very short period of time after exposure to UV radiation or cessation of such exposure. Such compositions can also compensate for the color alteration phenomenon which is generally associated with poor behavior of conventional pigments with respect to sebum.

Submitted herewith is a Rule 132 declaration which further explains and demonstrates the unique, beneficial properties associated with the claimed invention. The Rule 132 declaration compares a composition of the present invention containing the required photochromatic and goniochromatic compounds with a comparative composition containing

one of Lagrange's photochromatic compound (as well as a goniochromatic compound). That is, the difference between the two compositions was the type of photochromatic compound contained in each of the respective compositions.

More specifically, the photochrome representative of those disclosed in Lagrange *et al.* (US patent 6,123,952) in the Comparative Composition was a derivative of the diarylethene family manufactured by Yamada Chemical, under the name Diarylethene #1-3. (Rule 132 dec., par. 5). The photochrome representative of the present invention was a derivative of naphthopyrane, manufactured by James ROBINSON under the name Reversacol Flame®. (Rule 132 dec., par. 6).

As demonstrated in the Rule 132 declaration, there was a dramatic cosmetic difference associated with the present invention (combining a naphthopyrane derivative photochrome with a goniochromatic agent) as compared to a composition containing a diarylethene derivative according to Lagrange *et al.* and a goniochromatic agent. The invention composition had a significant color difference and an original dynamic effect in terms of color and shine after 3 minutes of exposure to UV radiation, whereas, in stark contrast, the comparative composition containing a representative Lagrange *et al.* photochrome slightly darkened after UV exposure. (Rule 132 dec., par. 9). The difference in color difference and/or original dynamic effect properties between the Invention Composition and the Comparative Composition discussed above demonstrate the surprising and unexpected benefit derived from having both the claimed naphthopyrane derivative photochrome and the claimed goniochromatic agent in the Invention Compositions. (Rule 132 dec., par. 11).

Thus, even assuming that the pending rejection constitutes a *prima facie* case of obviousness -- which as explained in Applicants' February 4, 2009, response is not the case -- sufficient evidence has been presented to rebut such a hypothetical *prima facie* case of obviousness. That is, sufficient evidence has been submitted demonstrating that unique properties result from the combination of a goniochromatic compound and the required naphthopyran photochrome to overcome the pending obviousness rejection.

In summary, the present invention requires the presence of two specified colorants in a single composition. As explained/demonstrated in the present application and Rule 132 declaration, this combinations yields unique results. The applied art would not have led to the inventive compositions of the present application. In short, the invention compositions and their benefits could not have been expected from the combination of references applied in the Office Action.

For all of the above reasons, as well as all of the reasons set forth in Applicants' February 4, 2009, response, Applicants respectfully request reconsideration and withdrawal of the §103 rejections.

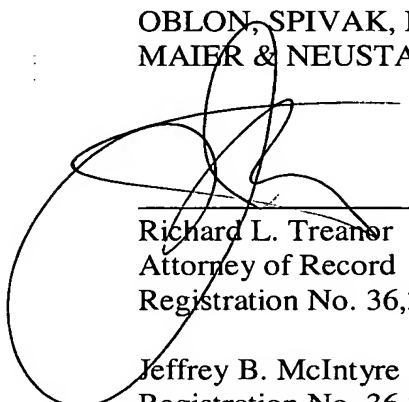
Application No. 10/687,645

Response to Office Action dated August 4, 2008

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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